



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

LIVES AND TIMES OF THE CHIEF JUSTICES OF THE
SUPREME COURT OF THE UNITED STATES.BY HENRY FLANDERS.¹

The above handsome volume has just been issued in a style very creditable to the liberality of the publishers. The care and labor bestowed by the author upon his work, merited the compliment.

Mr. Flanders has hitherto been known as the author of two very excellent works on Maritime Law. In this new field of literary labor, he has displayed great industry and care in collecting material, and much discrimination in weighing authorities. And above all, we must give him credit for a manly frankness in stating the conclusions which he has arrived at. The most valuable quality in a biographer is integrity—but it is also the rarest. A reader of biographies will feel the force of Charles Lamb's exclamation in the church-yard, "I wonder where they bury the bad people." Mr. Burke says that we should take care not to depreciate our ancestry, because by exalting them in our own imaginations, we raise the standard of the examples we aspire to. This may be very right in dealing with them as a class, or in treating of those objects of a nation's admiration, such as Alfred the Great, whose attributes are the emanations of popular characteristics. But in writing of common-place men, whose lives form a part of the history of their times, we must have them fairly set before us with all their weaknesses and incongruities, when necessary to explain any circumstances in their career. It is often the saddest and therefore the most solemn duty of an honest biographer, and it should, for that reason, be done in a reverent spirit. We want no *Chroniques Scandaleuses*: we deprecate the unearthing of faults which, for all the world's concern with them, were buried with the dead man's bones, and we desire no posthumous gibbeting of reputations, but we do ask that our historians and biographers, when dealing with the characters of men whose lives are public property, should cease to be mere apologists, and that they should believe it is not their duty to present the subject of their memoirs as they should have

¹ Published by Lippincott, Grambo & Co., Philadelphia.

been, but as they actually were. In respect of truthfulness, we believe Mr. Flanders has performed his duty fairly to the public.

The characters of Jay and Rutledge which are the subjects of the first volume, form happy contrasts. The comparison of the individual traits of these two men, whose careers of usefulness ran so nearly parallel, and led to positions of equal merit and approval, illustrates forcibly from how widely different starting points the paths which lead to eminence converge. In the character of Rutledge we discover a fitness for the times he lived in, which makes his fiery, impetuous character, appear almost as the necessity of a society in a state of revolution, and there is a fearful degree of dramatic truth in the awful eclipse of that superb intellect, when the restored repose of an organized government left no fair field for the display of its powers. But Jay is the very last person one would select as a revolutionary leader. He possessed those exquisitely balanced moral qualities, that calm judgment and deliberate purpose whose field of action is a state of public affairs and society, when "human statute has purged the gentle weal." Possessing few qualities which captivate popular approval, except that equability of temper and sweetness of disposition which go further to win the affections than to excite admiration, he nevertheless occupied no less important posts and had fully as large a share of the nation's confidence as his more brilliant, and perhaps more highly gifted successor, on the Supreme Bench.

We quote a passage from this work in which Mr. Flanders very happily expresses Mr. Jay's views in the early days of the Revolution, as furnishing an illustration of the moderation of which we speak :

"Mr. Jay was fully sensible of the alarming crisis that had arrived in the public affairs. He was opposed, however, to precipitate action. In fact, while viewing the acts of the ministry as aggressive, unconstitutional, and dangerous to the rights and liberties of his countrymen, his sentiments as to the measure and mode of redress were of the most moderate tone. He had not risen 'to the height of the great argument.' He was seeking reinforcement from hope, not resolution from despair. He was eminently a man

of prudence and caution. He was not sagacious of the future. His watch, unlike Talleyrand's, did not go faster than his neighbor's. He seldom placed himself in the van of events. No fiery, burning zeal, dwelt in his bosom. But when he assumed a position, the solid ground was not more immovable. He performed his duty under all circumstances with steadiness, resolution, and undiverted attention. But neither his opinions nor conduct were in the smallest degree the result of impulse or enthusiasm. His perceptions were strong rather than quick. He was more remarkable for logic than intuition. Thus constituted, we might naturally infer that he would embrace the views of the moderate party, rather than those of more eager and impetuous characters. As the contest proceeded, however, his spirit rose with the spirit of his countrymen, and he advanced steadily but cautiously on the course he now adopted."

Possessing such qualities and views, it is singularly creditable to the good sense of his countrymen that so great confidence was reposed in Mr. Jay. As a member of the Council of Safety, he became afterwards entrusted with almost dictatorial powers, which his excellent judgment enabled him to exert with equal benefit to the States and to the citizens. Mr. Jay's early views were shared by many others, who afterwards became earnest and zealous champions of the independence of their country, and it will perhaps not be considered out of place to quote from the present work a letter from Gouverneur Morris to Mr. Penn, in which Morris expresses views not very complimentary to the masses of his countrymen, but which may be excused in "a young man of twenty-two, self-confident, daring, ambitious, contemptuous."

"The port of Boston," he says, "has been shut up. These sheep," (the people,) "simple as they are, cannot be gulled as heretofore. In short, there is no ruling them; and now, to leave the metaphor, the heads of the mobility grow dangerous to the gentry, and how to keep them down is the question. While they correspond with the other colonies, call and dismiss popular assemblies, make resolves to bind the consciences of the rest of mankind, bully poor printers, and exert with full force all their other tribunital powers, it is impossible to curb them. But art sometimes goes further than

force, and therefore to trick them handsomely, a committee of patri-
 cians was to be nominated, and into their hands was to be com-
 mitted the majority of the people, and the highest trust was to be
 reposed in them by a mandate that they should take care, *quod res-*
publica non capiat injuriam. * * The mob begins to
 think and reason. Poor reptiles ! it is with them a vernal morning ;
 they are struggling to cast off their winter's slough ; they bask in
 the sunshine, and ere noon they will bite, depend upon it. The
 gentry begin to fear this. Their committee will be appointed, they
 will deceive the people, and again forfeit a share of their confidence.
 And if these instances of what with one side is policy, with the
 other perfidy, shall continue to increase and become more frequent,
 farewell, aristocracy ! I see, and I see it with fear and trembling,
 that if the disputes with Britain continue, we shall be under the
 worst of all possible dominions. We shall be under the dominion
 of a riotous mob. It is the interest of all men, therefore, to seek
 for réunion with the parent state. A safe compact seems, in my
 poor opinion, to be now tendered. Internal taxation is to be left
 with ourselves. The right of regulating trade to be vested in Great
 Britain, where alone is found the power of protecting it. I trust
 that you will agree with me that this is the only possible mode of
 union."

And in connection with this amusing and characteristic letter,
 we will not hesitate to introduce Mr. Flanders' spirited sketch of
 this remarkable man :

"If the figure of Gouverneur Morris is eclipsed by the superior
 proportions of Franklin's, he was, nevertheless, no common man.
 He had extensive information, and vigorous faculties. He had quick
 and clear perceptions, and admirable talents for affairs. He was
 sagacious, reflective, acute and versatile. He had employed
 his mind chiefly upon law, politics, and the practical concerns of
 life, though he was by no means insensible to the attractions of lite-
 rature. His imagination was lively, but his genius was eminently
 practical. He was voracious of facts, and was conversant with the
 details of finance, trade, manufactures, and agriculture. The char-
 acter of his mind disposed him to subjects of immediate interest,

rather than remote inquiries. He revered order, had high respect for the advantages of fortune, and was uncompromisingly opposed to every scheme of politics that might endanger either. He had great powers of eloquence. His illustrations were apt and pointed; his elocution flowing and graceful. Unlike duller mortals, he never spun 'the thread of his verbosity finer than the staple of his argument.' He was a great talker, and fitted to enlighten, instruct and adorn society. His conversation was lively and various, but frequently offended by a tone of dogmatism which he never could correct. He did not bear his faculties meekly. He had not the grace of conciliation. With undoubting confidence in his own convictions, he had small respect for those of other people. He had a brave, outspoken nature, scorned to conceal his sentiments, and was not veered from his course,

'By every little breath that under Heaven is blown.'

He stood firmly on the earth, and his feelings never soared beyond it. He walked by sight and not by faith. The spiritual had small dominion over him.

With his free, unrestrained wit, he would have put to flight a whole troop of transcendentalists, with their water-gruel aspirations, and yearning after imaginary good. He had high animal spirits, and voluptuous tastes. 'He is fond of his ease,' said Madame de Damas, a French lady, who knew him intimately and admired him much, 'does his best to procure it, and enjoys it as much as possible. He loves good cheer, good wine, good company. His senses, as well as his mind, have a high relish of perfection, and strive to attain it. He never eats a bad dinner without a severe censure upon the cook, as he never listens to folly without a keen rebuke.'

But to give anything like a just notion of the contents of Mr. Flanders' volume, would surpass the limits we are able to assign to this notice. The lives of both Jay and Rutledge contain a summary of the early training, and of the personal characteristics of the individuals, and a full account of their public services. That of Jay was extended over a more varied field, and therefore, perhaps, has a greater degree of interest than that of Rutledge, whose

services and reputation was more provincial. A great deal of instruction, as well as of entertainment, is afforded by the author in the sketches, interspersed throughout the volume, of individuals brought into connection with the principal subjects, and of which we have already given one extract.

In the life of Jay the two most important points treated of are his mission to Spain, Chapter XI, and the treaty which he negotiated with England, and which is commonly known as Jay's Treaty, Chapter XV.

The career of Mr. Jay while Minister to Spain, is carefully and minutely traced out, and forms a most agreeable narrative, flattering to our national pride, as all our early diplomacy was, and disgraceful to the Spanish government, as most Spanish diplomacy has been. The subject of Jay's treaty is discussed in a clear and discriminating spirit. It is this point in his career which gave most offence, but we think that Mr. Flanders has brought a mass of contemporaneous evidence in support of its propriety, or rather necessity, which will be found convincing. It was a necessity, because it was the best that could have been obtained, and we believe that impartial history will give just praise to those who, at the risk of their popularity, had the courage to support it.

The life of Rutledge forms almost a complete history of the Southern war of Independence, and to some readers may prove, from the variety of personal narratives it contains, the more agreeable. There are some points of history treated in this volume in too candid a spirit, perhaps, always to be flattering to national vanity, but the time we believe has passed when an American historian will feel himself called upon to discuss any public matter otherwise than in the spirit of exact truth. It is indeed pitiable, if we cannot stand the test of impartial history.

We trust soon to have the remaining volumes of the work. The lives of Marshall and of Ellsworth will afford an excellent field for Mr. Flanders' research, and they will enable him to enter more fully into the judicial history of the Supreme Bench. The life of Chief Justice Cushing will afford but little scope for an interesting biography. He took no part in the politics of the country. He

was only a lawyer. The judicial careers of both Jay and Rutledge were also unimportant, and though Mr. Flanders has given the details of their most interesting decisions, they afford but meagre elements of interest in this volume. The succeeding ones, on that score, will be more interesting to the lawyer, if not to the layman.

It is after full consideration that we recommend this work to the perusal of our readers.

RECENT AMERICAN DECISIONS.

In the Supreme Court of Pennsylvania.

RYAN vs. THE CUMBERLAND VALLEY RAILROAD COMPANY.

1. Where several persons are employed to attend to the same general service, and one of them is injured from the carelessness of another, the employer is not responsible.
2. Where A, a laborer on a railroad, engaged in making repairs on the track, which are carried on partly by the use of a gravel train moved by locomotive power, meets with an accident by the dumping of one of the cars, he has no remedy against the railroad.
3. The relation of master and servant is a relation of contract.

The opinion of the Court was delivered by

LOWRIE, J.—The plaintiff, with many others, was employed by the defendants to make repairs on their road, and the work was carried on partly by means of a train of gravel cars, made to dump to either side, and moved by locomotive power. He was a common laborer, employed in digging and in filling the cars and such like work; and, as the hands boarded in Chambersburg, about four miles distant, it was usual, and therefore it is proper to say that it was the understanding, that they should ride to and from their work in the gravel cars. While the plaintiff and others were thus going to their work, at railroad speed, the accident complained of happened by the dumping of one of the cars, which seems not to have been hooked, and throwing the plaintiff out upon the road.

The nature of the case requires the admission that it was the understanding of the parties that the hands were to ride on the